

**IN THE CHANCERY COURT OF LEWIS COUNTY, TENNESSEE  
AT HOHENWALD**

IN RE:

SENTINEL TRUST COMPANY

NO. 4781

FILED  
AT 12:35 O'CLOCK P.M.

SEP 26 2006

JANET WILLIAMS, CLERK &amp; MASTER

BY *Janet Williams*

**OBJECTION TO MOTIONS SEEKING APPROVAL OF RECEIVER, OUTSIDE  
COUNSEL, AND THIRD PARTY FEES**

Comes now Sentinel Trust Company, by and through Danny N. Bates, its principal stockholder and director, and the other members of the Board of Directors of Sentinel Trust Company (the "Objecting Parties"), objecting to the pending motions for approval of receiver, outside counsel and third party contractor fees for June, 2006 and July, 2006 (filed September 14, 2006).

**1. SENTINEL TRUST COMPANY HAS NO INCOME**

Sentinel's sources of revenues were extinguished by the give-away of its ongoing trust business in December, 2004 by the Commissioner-in-Possession to his former employer, SunTrust Bank. The Objecting Parties have consistently maintained and still maintain that collections from the liquidation of trust assets comprise trust property and that only when the claims of trust grantors and beneficiaries have been fully extinguished might Sentinel Trust Company be held to have a corporate interest in remaining assets. Of the \$2.1 million reported as "revenues" by the receivership through June 30, 2006<sup>1</sup>, only \$667,899.14 is identifiable as having been collected or derived from income or corporate assets of Sentinel Trust Company on and after May 18, 2004. The remaining "revenues" of \$1,449,067.27 were from trust property.

<sup>1</sup>Acting Commissioner-in-Possession's and Sentinel Trust Receiver's Notice of Filing of Financial Information as of June 30, 2006, filed August 8, 2006

## 2. VIRTUALLY ALL CASH HAS ARISEN FROM THE DISPOSAL OF TRUST PROPERTY

Virtually all funds reported to have been received during the receivership were collected from the liquidation of assets belonging principally to the defaulted bond issues being administered by Sentinel in its capacity as trustee under indenture at the time of seizure. According to the financial information as of June 30, 2006 and filed with the Court on August 8, 2006 by the Acting Commissioner-in-Possession and Receiver, the SunTrust Bank account #4049233 (the "Pooled Fiduciary Account"), detailed as Exhibit A thereto, held the reported balance of \$3,828,280.22, including funds received from defaulted indenture trusteeships in partial payment of fees and expenses advanced by Sentinel prior to its seizure on May 18, 2004. However, Exhibit A did not show that the \$195,127.22, asserted by the Objecting Parties to be trust property and received from liquidation of the Hilliard Lyons safekeeping account, had been transferred to the Pooled Fiduciary Account as was indicated would occur in the notice (page 16) filed on April 21, 2006. In addition, Exhibit B of the August 8 filing reported that the total "revenues" of \$2,116,967.41 included approximately \$1,449,067.27 (inclusive of the cash from the Hilliard Lyons account) in collections from liquidation of trust assets held for indenture trusteeships in default prior to institution of the receivership. Exhibit C to the notice reported post-May 18, 2004 trust collections of \$15,556,773.09 from which \$9,910,077.00 was detailed as having already been paid to holders of defaulted bond issues. The schedule of settlements, however, did not list the \$7,724,465.10 received on June 9, 2004 for the July 15, 2004 redemption of the Jacksonville, Florida Series 1996 bond issue. In summation, from reports filed with the Court, the Commissioner-in-Possession and Receiver have reported collections of \$23,476,365.41 from trust assets (including funds associated with the Jacksonville Series 1996

bond issue), which, in keeping with the policy of Sentinel Trust Company, should have been more than sufficient to reimburse the "Pooled Fiduciary Account" for the overdrafts carried by its Trust Department for defaulted bond issues by about three times over. (Sentinel's policy regarding collection of trust assets had been that the first priority was to reimburse the "pooled fiduciary account" for cash advanced therefrom to prime the collection of non-cash assets of defaulted bond issues, plus a monthly overdraft charge of 1.5%. Only when the pooled fund had been completely replenished could Sentinel be rightfully entitled to recognize accrued fees and expenses.)

### **3. HOLDERS OF DEFAULTED BONDS HAVE BEEN GIVEN PRIORITY OF PAYMENT**

Based on the June 30, 2006 financial reports filed by the Acting Commissioner-in-Possession and Receiver, the holders of defaulted bonds have already received \$9.9 million in cash distributions while the issuers and beneficiaries of non-defaulted trust accounts have receiving none of the cash from the "Pooled Fiduciary Account" to which they are entitled. In effect it appears that the trouble-free, non-defaulted trust accounts are being taxed for the costs of administration of the receivership and with the expenses of the troublesome, defaulted trust accounts.

### **4. TRUST FUNDS MAY NOT BE USED FOR RECEIVER FEES AND EXPENSES**

Although it may be argued that Sentinel's policy is not binding on the Commissioner and that the payment of fees and expenses of the receivership might be construed as to command priority<sup>2</sup> over payments to trust grantors and beneficiaries, the provisions of the "Tennessee

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<sup>2</sup> *Corpus Juris Secundum*, 1952, Volume 75, §287: "The equitable right to follow a special deposit or trust funds into the hands of a receiver as a claim superior to that of a general creditor is well recognized." and §171: "The court, however, may not lawfully direct the receiver to consume, in his operations, funds and property to which another asserts title or lien. Money paid to a receiver under a mistake of law and still in his hands may be required to be returned, less fees and expenses properly allowed against them while in the receiver's hands."

Uniform Trust Code,” Public Acts, 2004, Chapter 537, Section 46 that *Trust property is not subject to the personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt* strongly point to the contrary. Nevertheless, according to the financial statements filed with the Court on August 8, 2006, the Commissioner-in-Possession and his receiver had spent, through June 30, 2006, about \$1.5 million for their fees and expenses, substantially in excess of the \$667,889.14 in estimated non-trust resources described above.

**5. THE RECEIVER WAS APPOINTED BY AN EXECUTIVE BRANCH OFFICER, NOT THE COURT**

The status of a receiver appointed by an executive officer is not analogous to that of one appointed by a court in a judicial proceeding, for the latter is under judicial control, and the property in his hands is actually subject to judicial power. In the case of a receiver appointed by an executive officer, pursuant to law, the property he takes charge of has not been brought within the jurisdiction of any court by procedure against it. There is no seizure or attachment of the judicial power. The commissioner having the power of appointment is an executive officer, and the receiver appointed is a public officer of subordinate authority, charged with the duty of administration of the funds in his hands, in accordance with law.<sup>3</sup>

**6. THE COURT IS THE FINAL AUTHORITY ON THE RECEIVERSHIP**

It has been long established that the administrative actions of the Court in charge of a receivership are at all times under its control, to be enforced or suspended as it sees fit, and,

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<sup>3</sup> *American Jurisprudence*, 2<sup>nd</sup> Edition, 1972, Volume 65, § 138

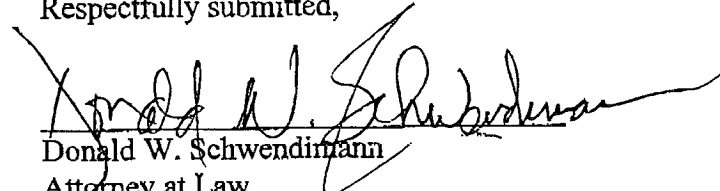
when mistakes occur, they are subject to its correction so long as it is administering the estate.<sup>4</sup> In addition, it is the duty of the Court to supervise and direct the receiver in the administration of the receivership and to see that the property is handled by the receiver in such a way as best to serve the interests of all parties concerned. In so doing the Court may act on its own motion, and whenever the Court is made to know, in a proper manner, that its receiver is acting improperly, it must *sua sponte* direct him to cease; or it may act on application of interested parties.<sup>5</sup>

#### 7. CONCLUSION

Accordingly, the Objecting Parties request the Court to disallow payment of the receiver's fees and expenses and to require that any trust funds previously taken be restored to the "Pooled Fiduciary Account."

WHEREFORE, these parties OBJECT to the grant of such motions.

Respectfully submitted,



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<sup>4</sup> *Corpus Juris Secundum*, 1952, Volume 75, §146

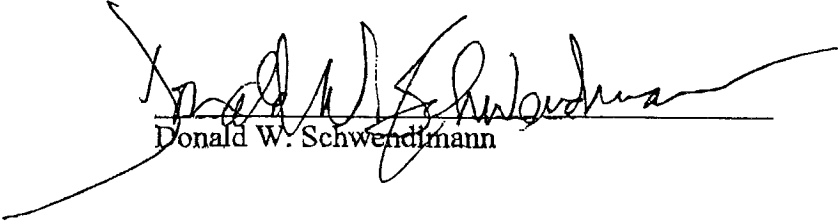
<sup>5</sup> *Corpus Juris Secundum*, 1952, Volume 75, §147

**Certificate of Service**

I, the undersigned, do hereby certify that I have faxed a true and exact copy and mailed a true and exact copy of the foregoing Objection, by depositing said copies in the U.S. Mails, postage prepaid, this 26th day of September, 2006, to:

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